

REMARKS

Applicant has amended the claims 1 and 4. Applicant respectfully submits that these amendment to the claims are supported by the application as originally filed. In addition, Applicant respectfully submits that these amendments to the claims 1 and 4 are merely for the purpose of clarifying the language and do not raise any new issues which would require further consideration and/or search. Accordingly, the Final Office Action will be discussed in terms of the claims as amended.

The Examiner has rejected the claims 1 through 4 under 35 USC 112, first paragraph stating that the claims 1 and 4 contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors, at the time the application was filed, had possession of the claimed invention. In particular, it is the Examiner's concern that the present invention comprises emulsion of zirconium oxide, a liquid paraffin and an emulsion of a polyvinyl acetate resin, and the claims were directed to a composition including polyvinyl acetate resin which was not particularly claimed as an emulsion. Applicant has amended the claims to clarify the language so that it is consistent with the specification, particularly page 3, lines 3-6. Therefore, Applicant respectfully submits that the claims 1 through 4 now comply with the requirements of 35 USC 112, first paragraph.

The Examiner has rejected the claims 1 through 4 under 35 USC 103 as being obvious over Quemini stating that Quemini discloses a make-up composition comprising 0.5 to 25 wt% pigment such as zirconium oxide, 0.5 to 40 wt% of liquid paraffin and 0.01 to 5 wt% of vinyl acetate copolymer and these percentages provide for a ratio that overlaps with the presently claimed ratio of 1:4:1.

Since the zirconium, paraffin and polyvinyl acetate resin are provided at a weight ratio of 1:4:1, to maintain this ratio and still be within the limits of the composition of Quemini, Applicant respectfully submits that the emulsion of zirconium oxide would be provided in the amount of 5 wt%, the liquid paraffin would be provided in 20 wt% and the vinyl acetate copolymer would be provided in 5 wt%. Applicant respectfully submits that this only provides for 30 wt% of the total product and the other 70% is something else in order to maintain the 1:4:1 ratio and also use the zirconium, paraffin and vinyl acetate within the ranges set forth by Quemini. In contrast thereto, Applicant's invention requires that almost

100% by weight of the product comprise the zirconium oxide, liquid paraffin and vinyl acetate (see page 5, lines 10-20 of Applicant's application). Still further, Applicant respectfully submits that the other elements which could be provided into Applicant's composition, namely the sodium, aluminum, phosphorus, sulfur and potassium, all totaled comprise less than 1 wt% of the total composition. Accordingly, Applicant respectfully submits that Quemin does not suggest Applicant's invention.

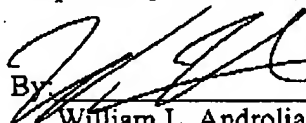
In addition and as has been previously argued, Applicant respectfully submits that Quemin is a make-up composition, as recognized by the Examiner, and is not an analogist art. In particular, Applicant respectfully submits that one of ordinary skill in the art of water repellent sealants would not look to make-up compositions and would not image that a make-up composition could be utilized as a water repellent for concrete, mortar, stone and wood. Therefore, Applicant respectfully submits that Quemin is not analogist art. Still further, Applicant respectfully submits that the preamble of Applicant's claims set an environment in which Applicant's invention functions and therefore comprises a limitation on Applicant's invention.

In view of the above, therefore, Applicant respectfully submits that the claims 1 through 4 are not obvious over Quemin.


In view of the above, therefore, it is respectfully requested that this Rule 116 Amendment be entered, favorably considered and the case passed to issue.

Please charge any additional costs incurred by or in order to implement this Rule 116 Amendment or required by any requests for extensions of time to QUINN EMANUEL DEPOSIT ACCOUNT NO. 50-4367.

Respectfully submitted,

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